

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA**

**PLAINTIFF**

**v.**

**Civil No. 1:17cv122-HSO  
Criminal No. 1:14cr77-HSO-  
RHW-1**

**HOSEA BLACKSTON**

**DEFENDANT**

**ORDER DENYING DEFENDANT'S MOTION [301] TO FILE STATEMENT  
OF EVIDENCE AND DENYING AS MOOT DEFENDANT'S MOTION [308]  
REQUESTING AGREEMENT OR OBJECTION TO DEFENDANT'S MOTION  
[301] TO FILE STATEMENT OF EVIDENCE**

BEFORE THE COURT are Defendant Hosea Blackston's Motion [301] to File Statement of Evidence Pursuant to Federal Rule of Appellate Procedure 10(c) and Defendant's Motion [308] Requesting Agreement or Objection to Defendant's Motion [301] to File Statement of Evidence. The Court finds that Defendant's Motions [301] [308] should be denied.

**I. RELEVANT BACKGROUND**

On February 18, 2018, Defendant pled guilty to one count of the indictment pursuant to a written Plea Agreement [132] and Plea Supplement [133] entered into with the Government. Minute Entry, February 18, 2015. On May 6, 2015, Defendant was sentenced. The transcript [186] of sentencing was filed on June 26, 2015, and the transcript [193] of the plea hearing was filed of record on August 4, 2015.

Subsequently, Defendant appealed this Court's Order [284] denying his Motion [276] to Vacate to the United States Court of Appeals for the Fifth Circuit. Notice of Appeal [287]. This Court denied Defendant's Motion [288] for Certificate of Appealability on October 30, 2017. Text Order, October 30, 2017. On May 24, 2018, Defendant filed a Motion [301] to File Statement of Evidence Pursuant to Federal Rule of Appellate Procedure 10(c) in this Court, followed by a Motion [308] Requesting Response to Defendant's earlier Motion [301].

On July 26, 2018, the Fifth Circuit denied Defendant's motion for certificate of appealability, motion to proceed in forma pauperis, and motion to present evidence. Certified Copy of J./Mandate of USCA [305]. Defendant's motions for reconsideration and for rehearing en banc are currently pending before the Fifth Circuit.

## II. DISCUSSION

Federal Rule of Appellate Procedure 10(c) affords an appellant the opportunity to prepare a "statement of the evidence or proceedings from the best available means," "[i]f a transcript of a hearing or trial is unavailable." FED. R. APP. P. 10(c). Before appellant's proposed statement may be filed with the district court, he is required to serve the proposed statement on the appellee, in this case the Government. *Id.* The appellee may then "serve objections or propose [an] amendment within 14 days." *Id.* "[T]he statement and any objections or proposed amendment must then be submitted to the district court for settlement and approval." *Id.* Only once the district court settles and approves the statement is

it made part of the record on appeal. *Id.*

Defendant's Motions should be denied for several reasons. First, he failed to follow the procedure outlined in Rule 10(c). Defendant filed his statement with the Court before serving the Government and allowing it the allotted time to respond. *See* FED. R. APP. P. 10(c). Moreover, Rule 10(c) is inapplicable here. The Rule provides the mechanism to supplement the record "[i]f the transcript of a hearing or trial is unavailable." *See id.* However, the transcript of the change of plea hearing and the sentencing hearing are both filed of record in this case, and they constitute the best means of revealing what occurred. *See id.* In addition, Defendant's Statement of Evidence is not a statement of the proceedings. Rather, Defendant mounts challenges to the evidence and points the Court to statements not made at the hearings. Defendant does not challenge the validity or accuracy of the transcript. For these reasons, Defendant's Motion [301] to File Statement of Evidence Pursuant to Federal Rule of Appellate Procedure 10(c) should be denied, rendering his Motion [308] Requesting Agreement or Objection to Defendant's Motion [301] to File Statement of Evidence moot.

### III. CONCLUSION

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that Defendant's Motion [301] to File Statement of Evidence Pursuant to Federal Rule of Appellate Procedure 10(c) is **DENIED**.

**IT IS, FURTHER, ORDERED AND ADJUDGED** that Defendant's Motion [308] Requesting Agreement or Objection to Defendant's Motion [301] to File

Statement of Evidence is **DENIED AS MOOT**.

**SO ORDERED AND ADJUDGED**, this the 25<sup>th</sup> day of September, 2018.

*s/ Halil Suleyman Ozerden*

HALIL SULEYMAN OZERDEN  
UNITED STATES DISTRICT JUDGE